

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. SAYLOR,

Plaintiff,

vs.

ALLISON, et al.,

Defendants.

1:21-cv-01285-GSA-PC

**ORDER FOR CLERK OF COURT TO
RANDOMLY ASSIGN A UNITED
STATES DISTRICT JUDGE TO THIS
CASE**

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION TO PROCEED IN IN FORMA
PAUPERIS BE DENIED
(ECF No. 2.)**

**OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS**

I. FINDINGS

Bryan E. Saylor ("Plaintiff") is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. §1983. Plaintiff filed the Complaint commencing this action on August 24, 2021. (ECF No. 1.)

On August 24, 2021, Plaintiff filed a motion to proceed *in forma pauperis* and a certified copy of his prison trust account statement, pursuant to 28 U.S.C. § 1915. (ECF No. 2.) It appears, from a review of Plaintiff's trust account statement, that Plaintiff can afford the costs of this

1 action. Evidence shows that on August 20, 2021, the average monthly balance in Plaintiff's
2 account during the past six months was \$910.99, and the balance of Plaintiff's account was
3 \$1,371.20. (Id. at 2.)

4 The Court notes that some of the funds in Plaintiff's account may be from "stimulus
5 checks." (Id. at 3-4.). However, Plaintiff has not cited to any law, and the Court is not aware of
6 any, preventing "stimulus checks" from being included when determining whether a plaintiff can
7 afford to pay the filing fee. Additionally, other courts in this district have included the funds
8 when making the determination. See, e.g., Hammler v. Zydus Pharmacy, 2021 WL 3048380, at
9 *1-2 (E.D. Cal. July 20, 2021) (considering the plaintiff's "economic impact payments" when
10 determining that the plaintiff was "financially able to pay the filing fee"); Corral v. California
11 Highway Patrol, 2021 WL 2268877, at *1 (E.D. Cal. June 3, 2021) (including the plaintiff's
12 "pandemic stimulus payments" in determining that the "plaintiff has made an inadequate
13 showing of indigency").

14 Therefore, Plaintiff's motion to proceed *in forma pauperis* should be denied, and Plaintiff
15 should be required to pay the statutory filing fee of \$402.00 for this action in full.

16 **II. ORDER, RECOMMENDATIONS, AND CONCLUSION**

17 **A. Order**

18 The Clerk of Court is **HEREBY ORDERED** to randomly assign a United States District
19 Judge to this case; and

20 **B. Recommendations and Conclusion**

21 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

22 1. Plaintiff's motion to proceed *in forma pauperis*, filed on August 24, 2021, be
23 DENIED; and

24 2. Plaintiff be required to pay the \$402.00 filing fee for this action in full within
25 thirty days.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
28 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file

1 written objections with the court. Such a document should be captioned “Objections to
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
3 objections within the specified time may waive the right to appeal the District Court’s order.
4 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 Dated: September 24, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE